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Jonathan P Meyer Motorola Inc 1303 East Algonquin Road Schaumburg, IL 60196			WOZNIAK, JAMES S	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID JOHN BENJAMIN PEARCE
and JON ALASTAIR GIBBS

Appeal 2008-005318
Application 09/830,306
Technology Center 2600

Decided:¹ July 29, 2009

Before KENNETH W. HAIRSTON, CARLA M. KRIVAK
and KARL D. EASTHOM, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

In a Decision mailed May 7, 2009, the Board affirmed the Examiner's obviousness rejections of claims 1, 3, 4, 6, 7, 11 to 13, 15, 16, 18, 19, and 23

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper deliver) or Notification Date (electronic delivery).

to 26. Appellants have requested a rehearing of our decision to affirm the obviousness rejections of claims 1, 11 to 13, and 23 to 26 (Req. Reh’g. 1, 5). Appellants have not requested a rehearing of our decision to affirm the obviousness rejections of claims 3, 4, 6, 7, 15, 16, 18, and 19.

In the decision, we agreed with Appellants’ argument that the error concealment technique described in the preferred embodiment (e.g., Fig 6A) in Jeon “does not teach replacing one or more speech recognition parameters or the entire vector that has undergone a transmission error with *copies* of one or more *corresponding* speech recognition parameters” (Dec. 5). In response to Appellants’ argument (Br. 6 to 8) that the applied references do not teach replacing one or more speech recognition parameters or the entire vector that has undergone a transmission error with copies of one or more corresponding speech recognition parameters, the Board stated (FF 4) that “[i]n the admitted prior art of Jeon, a frame with erroneous segment(s) is replaced *in toto* with the contents of a buffered error-free frame (Figs. 3 and 4A; col. 1, ll. 5 to 12; col. 1, l. 59 to col. 2, l. 31)” (Dec. 4). Based upon this teaching in Jeon, the Board affirmed the obviousness rejections of all of the claims on appeal.

Appellants argue (Req. Reh’g. 2) that the Board’s reliance on the admitted prior art in Jeon is tantamount to a new ground of rejection, and that the Board should now grant Appellants’ “request that the application be reheard under §41.52 by the Board of Patent Appeals and Interferences upon the same record, addressing the new grounds for rejection, stating with particularity the points believed to have been misapprehended or overlooked in rendering the decision (see 37 CFR 41.50(b)(1) and (2)).” Inasmuch as

the Board relied on a portion of Jeon that was not relied on by the Examiner, Appellants' request for a rehearing is reasonable, and it is hereby granted.

Appellants now argue (Req. Reh'g. 3 and 4) that "the relied upon technique [in the admitted prior art portion of Jeon] involves the use of a replacement decoded signal received without error prior to the portion that was received with error, as opposed to a replacement portion that was received 'after said identified group of vectors'" as set forth in claims 1 and 13 on appeal. We agree with Appellants' argument that claims 1 and 13 use as a replacement one or more corresponding speech recognition parameters from a different vector received without error *after* the identified group of vectors with a transmission error is identified, whereas the admitted prior art in Jeon (col. 2, ll. 28 to 31) uses as a replacement one or more corresponding parameters from a different vector received without error *before* the identified group of vectors with a transmission error is identified.

In summary, the obviousness rejection of claims 1 and 13 based upon the teachings of Jacobs and Jeon can not be maintained in light of Appellants' convincing argument. In view of the argument presented for claims 1 and 13, and additional arguments presented by Appellants for claims 11, 12, and 23 to 26, the obviousness rejections of claims 11, 12, and 23 to 26 can not be maintained. On the other hand, the obviousness rejections of claims 3, 4, 6, 7, 15, 16, 18, and 19 are maintained in view of the fact that they are not listed in the request for rehearing.

As indicated *supra*, Appellants' request for a rehearing of our decision has been granted, and our decision should be modified to reflect our agreement with Appellants' arguments concerning claims 1, 11 to 13, and 23

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to 26. Thus, our affirmance of the Examiner's obviousness rejections of claims 1, 11 to 13, and 23 to 26 is hereby withdrawn, and the decision of the Board should be changed to affirmed-in-part.

REHEARING
GRANTED

KIS

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